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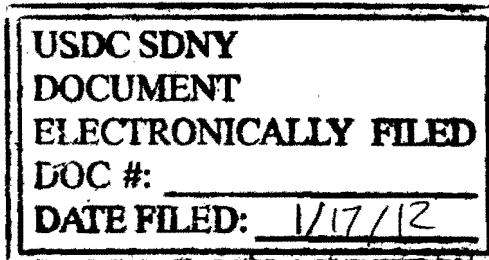
January 17, 2012

**MEMO ENDORSED**

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**By Electronic Mail**

Hon. Thomas P. Griesa  
United States District Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, New York 10007-1312



Re: Hypoxico, Inc. v. Colorado Altitude Training, LLC, et al., 02-CV-6191

Dear Judge Griesa:

Defendants Colorado Altitude Training LLC and Lawrence Kutt (collectively "CAT"), by and through their undersigned counsel, respectfully request permission to (1) file redacted copies of their Opening Brief in Support of Defendants' *Daubert* Motion to Exclude Plaintiff's Expert Damages Testimony ("Daubert Motion") and their Pre-Trial Memorandum; and (2) file a sealed copy of the exhibits to the Declaration of Michael F. Buchanan in Support of Defendants' *Daubert* Motion to Exclude Plaintiff's Expert Damages Testimony, Defendants' Motion in Limine to Exclude Evidence of Plaintiff's Commercial Embodiments, and Defendants' Pre-Trial Brief (the "Buchanan Declaration"). Plaintiff's counsel consents to this request.


The exhibits to the Buchanan Declaration include multiple documents that are designated "Confidential" or "Confidential - Attorneys Eyes Only" pursuant to this Court's August 19, 2004 Stipulated Protective Order. (Dkt No. 24.) The *Daubert* Motion and Pre-Trial Brief cite information derived from Confidential and Attorneys Eyes Only source documents. The confidential exhibits to the Buchanan Declaration and the redacted information in the *Daubert* Motion and Pre-Trial Brief constitute "trade secret[s] or other confidential research, development, or commercial information" that this Court may, in its discretion, require to "not be revealed or be revealed only in a specific way." Fed R. Civ. P. 26(c)(1)(G); *see also Bergen Brunswick Corp. v. Ivax Corp.*, No. 97 CIV. 2003, 1998 WL 113976, at \*3 (S.D.N.Y. March 12, 1998) (recognizing that "[p]otential damage from the release of sensitive business information" is "a ground for denying access to court documents"); *see also Gelb v. American Tel. & Tel. Co.*, 813 F. Supp. 1022, 1035 (S.D.N.Y. 1993) (granting motion to seal exhibits based on their potential to cause commercial harm pursuant to Rule 26(c)); *In re September 11 Litigation*, 723 F. Supp. 2d. 526, 533 (S.D.N.Y. 2010) (holding that certain "[c]onfidential documents exchanged in the course of discovery, negotiation, and mediation" should remain under seal).

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January 11, 2012  
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Proposed redacted versions of the *Daubert* Motion and the Pre-Trial Brief are attached to this Motion as Exhibits A and B, respectively, for this Court's review. Defendants previously provided unsealed, unredacted copies of these documents, as well as the Buchanan Declaration, to the Court and to opposing counsel on January 13, 2012.

Respectfully submitted,

  
Michael F. Buchanan

Approved  
Thomas P. Griesa  
  
1/17/12